

## **The Virginia Freedom of Information Act Rights & Responsibilities**

It is the policy of the Virginia Department of Corrections to make public records available in accordance with the Virginia Freedom of Information Act (FOIA). FOIA, § 2.2-3700 et. seq. of the *Code of Virginia*, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees. Persons incarcerated in state, federal or local correctional facilities are not afforded any rights under FOIA (§ 2.2-3703 (C)). The Virginia Department of Corrections has policies that govern what records incarcerated offenders may access.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

Per the *Code of Virginia*, the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

### **Your FOIA Rights**

- You have the right to request to inspect or receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA.

### **Making a Request for Records from the Virginia Department of Corrections**

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA. From a practical perspective, written requests are preferred. It can be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. Nevertheless, we cannot refuse to respond to your FOIA request if you elect to not put it in writing.
- The reason for your request for public records is irrelevant, and we cannot ask you why you want the records. FOIA does, however, allow us to ask you for your name and legal address. The Department requires that you provide your name and legal address with your request.

- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for records or documents. FOIA gives you a right to inspect or copy records; it does not apply to a situation where you are asking general questions about the work of the Department. In addition, we are not required to create a new record if the record does not already exist.
- You may choose to receive electronic records in any format used by the Department in the regular course of business. For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

**To request records from the Department, you should direct your request to the Manager of the Unit or the Warden or Superintendent of the facility that maintains the records that you are requesting.**

**Requests for copies of the Department's policies and procedures should be addressed to:**

**Policy and Initiatives Unit**

**Virginia Department of Corrections**

**P.O. Box 23963**

**Richmond, Virginia 23261**

**Phone: (804) 674-3303 ext. 1129**

**Fax: (804) 674-3643**

**To Contact, click the Policy & Initiatives Unit button on**

**<http://cfm.vadoc.virginia.gov/contacts/contact.cfm>**

**For other types of records, you can find information about the key Divisions and Units of the Department on the Department's Web site in the Agency Directory at <http://www.vadoc.virginia.gov/about/directory/default.htm>. The mailing address and main phone number for all Central Office (Headquarters) Units are:**

**Virginia Department of Corrections**

**P. O. Box 26963**

**Richmond, Virginia 23261**

**Phone: (804) 674-3000**

Contact information for Regional Offices, correctional facilities, probation and parole offices and community corrections facilities can be found through the links for each Division in the Agency Directory.

If you have questions concerning making a request for records or if you do not know to whom you should direct your request, you may contact the Department's FOIA Coordinator at:

FOIA Coordinator  
Communications Unit  
Virginia Department of Corrections  
P.O. Box 26963  
Richmond, Virginia 23261  
Phone: (804) 674-3124 or (804) 674-3303 ext. 1113  
Fax: (804) 674-3592  
To Contact, click the Freedom of Information Act (FOIA) button on  
<http://cfm.vadoc.virginia.gov/contacts/contact.cfm>

In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council's Web site can be found at: <http://dls.state.va.us/foiacouncil.htm>. The Council may be contacted by e-mail at [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us) or by phone at (804) 225-3056 or [toll free] 1-866-448-4100.

### **The Department's Responsibilities in Responding to Your Request**

- The Department must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- FOIA requires that the Department make one of the following responses to your request within the five-day time period:
  - 1) We provide you with the records that you have requested in their entirety.
  - 2) We withhold all of the records that you have requested, because all of the records are subject to specific statutory exemption(s). If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section(s) of the *Code of Virginia* that allows us to withhold the records.
  - 3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section(s) of the *Code of Virginia* that allows portions of the requested records to be withheld.
  - 4) If it is practically impossible for us to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to

respond to your request, giving us a total of 12 working days to respond to your request.

- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

### **Costs**

- You may have to pay for the records that you request from the Department. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items such as staff time spent searching for the requested records, copying costs, postage and any other costs directly related to supplying the requested records. It does not include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we will require you to pay a deposit before proceeding with your request.
- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs. We strongly recommend that you request an estimate of the cost if you are not familiar with the volume of the records that you are requesting and/or are not able or willing to pay charges of up to \$200 for the records.
- If not paid in advance, charges are due upon receipt of the records. A new request for records will not be processed until any amount owed for a previous request that is more than 30 days overdue has been paid.

### **Commonly used exemptions**

The *Code of Virginia* allows any public body to withhold certain records from public disclosure. The Department commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1 (1) of the *Code of Virginia*)
- Records subject to attorney-client privilege (§ 2.2-3705.1 (2)) or attorney work product (§ 2.2-3705.1 (3))
- Vendor proprietary information software (§ 2.2-3705.1 (6)) or agency software (§ 2.2-3705.1 (7))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1 (12))
- Records relating to the prevention of or response to terrorist activity, the disclosure of which would jeopardize the safety of any person (§ 2.2-3705.2 (4))

- Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, staff meeting minutes or other records the disclosure of which would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure (§ 2.2-3705.2 (6))
- Medical and mental health records (§ 2.2-3705.5 (1))
- Records of the Commitment Review Committee concerning individuals subject to civil commitment as sexually violent predators and records identifying the victims of such persons (§ 2.2-3705.2 (9))
- Records relating to a criminal investigation or prosecution (§ 2.2-3706 (F)(1))
- Records submitted in confidence to agents of the Department's Special Investigations Unit (§ 2.2-3706 (F)(3))
- Records of offenders incarcerated in correctional facilities (§2.2-3706 (F)(6))
- Records of adults under investigation or supervision by state probation and parole services (§ 2.2-3706 (F)(8))